

NE

Book 2

## AGREEMENT FOR TITLE XIX REVIEW

THIS AGREEMENT is made this 28th day of June, 1989, by and between the Nebraska Department of Social Services (the "Department") and Iowa Foundation for Medical Care, doing business in Nebraska as the Sunderbruch Corporation-Nebraska (the "Contractor").

## I. General Provisions

## 1.1 Agreement

During the term of this Agreement, the Contractor shall supply, and the Department shall purchase, the following services, throughout the State of Nebraska: medical and utilization review functions, consisting of preadmission review, concurrent review, continued stay review, quality review, retrospective review, and reconsiderations with respect to services and items provided to Title XIX recipients in acute care hospitals and psychiatric hospitals. The review shall not apply to:

1. Normal bassinet level of care for newborns;
2. Inpatient obstetrical care involving labor and/or delivery;
3. Inpatient physical rehabilitation;
4. Inpatient psychiatric and chemical dependency treatment for wards of the Department;
5. Inpatient detoxification;

6. All care provided in a Public Health Service (PHS) hospital;
7. Swing beds for Medicaid-only clients;
8. Ventilator-dependent clients;
9. Special-needs clients with special contracts;
10. Inpatient stays required to accomplish an actual surgical liver or heart transplant procedure; and
11. Inpatient hospital services in institutions for mental disease (IMD's) for clients age 65 or older.

The Contractor shall also supply and the Department shall purchase these review functions with respect to services and items provided to Nebraska-eligible Title XIX recipients in such hospitals outside Nebraska as the Department may designate.

#### 1.2 Delegation

Pursuant to Section 1902(d) of the Social Security Act, the Department hereby delegates to the Contractor the Department's authority to conduct the medical and utilization review functions specified in paragraph 1.1 of this Agreement. These functions will be carried out as described in the document "TSCN Plan for Title XIX Acute Care Review" and shall conform to the provisions

of Title 471 of the Nebraska Administrative Code. Changes in review criteria or procedures will be discussed with the Department and agreed upon before implementation.

1.3 Purpose

The purpose of this Agreement is to assist patients, practitioners, hospitals and the Department in assuring that services for which payment may be made under Title XIX of the Social Security Act and Title 471 of the Nebraska Administrative Code are medically necessary, of suitable quality and provided in appropriate settings in least restrictive environments.

1.4 Review Activities

The review activities performed by Contractor shall be consistent with Title XI, Part B of the Social Security Act. The determinations of the review program carried out by the Contractor shall be conclusive for payment purposes, provided the procedures specified in paragraphs 1.5 and 1.6 of this Agreement have been complied with, and subject to such rights to a hearing before the Department as may be available to the recipient under law.

1.5 Notice of Initial Determination

Whenever Contractor initially determines that services or items are not medically necessary, or that services or items need not be provided at a particular level of care, it shall promptly give notice of the determination to the recipient (the Department, if the recipient is a State Ward), and to the practitioner or provider or (if applicable) both. The notice shall include a statement that the recipient or practitioner or provider may request reconsideration by the Contractor and shall explain in simple terms how to seek reconsideration. The notice shall also state that failure to request reconsideration may result in nonpayment or termination of Title XIX benefits, whichever is applicable.

1.6 Reconsideration

Contractor, through one or more physician reviewers, shall reconsider its initial determination in each case where the recipient or practitioner or provider so requests. Reconsiderations shall be conducted in the same manner and within the same time frame as is required with respect to Title XVIII. Reconsiderations shall include adequate advance notice of the proceedings, the opportunity for the recipient, practitioner, or provider to be

represented by an attorney or other individual of his/her choice, and the opportunity to submit documentary materials. When deemed appropriate by TSCN, reconsideration shall also include an opportunity to make an informal oral presentation. Upon completion of the reconsideration, Contractor shall issue a prompt written decision, which shall include a statement of the reason for the decision. Copies of the decision shall be promptly furnished to the recipient, to the practitioner or provider or (if applicable) both, and to the Department.

1.7 Administrative Hearings

Contractor agrees promptly to provide necessary support as requested by the Department in connection with hearings before the Department concerning a matter previously reviewed by Contractor.

1.8 Effective Date and Term

This Agreement shall cover services rendered on or after July 1, 1989 and shall extend for twenty-four months, terminating June 30, 1991, unless extended in accordance with paragraph 1.9 of this Agreement.

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Transmittal # MS-91-21

Supersedes

Approved OCT 03 1991

Effective AUG 01 1991

1.9 Extension of Term and Termination

This Agreement shall be automatically extended for each ensuing fiscal year beginning July 1. Either party hereto may cancel this Contract for any reason upon submission of written notice to the other party at least ninety (90) days prior to the effective date of cancellation. Notwithstanding any of the foregoing, changes in Federal or State law which affect the availability of funds or changes in Federal law which affect the authority of the Contractor to carry out an acceptable program of review shall be viewed by both parties as binding factors which may force a change in the term of the Agreement. Upon termination of this Agreement, whenever it occurs, Contractor shall promptly supply the Department with all information necessary for reimbursement of any outstanding medical claims and shall comply with all then-applicable federal closeout regulations.

1.10 Amendment of Agreement

This Agreement may be amended at any time by written consent of both parties and not otherwise, except that any change in Federal or State law, or any interpretation of law by the Department of Social Services or by a court whose decisions constitute binding precedent in Nebraska, which significantly alters the Contractor's required

review activities under this Agreement, or any change in the availability of funds, or an increase or decrease in volume of units of review activity exceeding 3%, shall warrant good faith renegotiation of the compensation paid to the Contractor by the Department and of such other provisions of this Agreement as may be affected. If such renegotiation proves unsuccessful, this Agreement may be terminated on written notice by either party to the other on any basis that is reasonable under the circumstances, but not sooner than 60 days after the written notice unless agreeable to both parties.

1.11 State Medicaid Plan

This Agreement, and all amendments to it, shall be a part of the State Medicaid Plan.

1.12 Severability

In the event that any term or provision of this Agreement is held to be illegal, invalid, or unenforceable under the laws, regulations, ordinances, or other guidelines of any federal, state or local government to which this Agreement is subject, such term or provision shall be deemed severed from the Agreement and the remaining terms and provisions shall remain unaffected thereby.

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Transmittal # MS-91-21

Supersedes

Approved

OCT 03 1991

Effective AUG 01 1991

Transmittal # MS-91-2

1.13 Independent Contractor

Contractor and Department agree that all agents and employees of the Contractor in the performance of this Agreement shall act in an independent capacity and not as officers or employees of the State.

1.14 Notices

Any notice required or permitted under this Agreement shall be sufficient if sent to the following:

Administrator Medical Programs  
Nebraska Department of Social Services  
P.O. Box 95026  
Lincoln, NE 68509

Chief Executive Officer  
The Sunderbruch Corporation  
Colony Park Building, Suite 622  
3737 Woodland Avenue  
West Des Moines, IA 50265

1.15 Sanctions

The Contractor shall as appropriate include Title XIX cases in sanction reports to the United States Department of Health and Human Services pursuant to Section 1156 of the Social Security Act and Part 1004, Title 42, Code of Federal Regulations.



## II. Administrative Provisions

### 2.1 Safeguarding and Exchange of Information

Both the Department and the Contractor agree to abide by the confidentiality requirements of Section 1160 of the Social Security Act, by regulations issued or to be issued thereunder, Part 431, Subpart F, Code of Federal Regulations, with respect to data collected or otherwise dealt with in carrying out this Agreement; however, while release of any recipient or provider specific information to any third party will be strictly regulated, a free exchange of information relative to recipients and providers shall exist between the Contractor and the Department.

### 2.2 Record Retention by Contractor

Contractor agrees to comply with the record retention requirements of Title 45, Sections 74.21 through 74.23, Code of Federal Regulations.

### 2.3 Reporting Requirements for Contractor

The Contractor agrees to provide the Department with quarterly statistical summaries of all Title XIX review activities and to provide all reports relating to Title XIX review activity which may be required by the Department of Health and Human Services.

#### 2.4 Monitoring and Evaluation

In order to assure satisfactory performance by the Contractor, the Department and the Contractor agree to the monitoring and evaluation plan described in the "TSCN Plan for Title XIX Acute Care Review." The Department, and the Department of Health and Human Services, may evaluate, through inspection or other means, the quality, appropriateness and timeliness of services performed under this Agreement. The Department, and the Department of Health and Human Services, may audit and inspect any of the Contractor's records that pertain to services performed and determination of amounts payable under this Agreement, including such financial information as may reasonably be requested. Such access to records by the Department shall continue beyond the termination date of this contract for a period of three (3) years.

#### 2.5 Non-Discrimination.

The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended, and the Nebraska Fair Employment Practice Act, as amended, in that there shall be no discrimination against any employee who is employed in the performance of this Contract, or against any applicant for such employment, because of age,